

# HARKINS CUNNINGHAM

ATTORNEYS AT LAW  
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RECORDATION NO. \_\_\_\_\_

FILED 1425

INTERSTATE COMMERCE COMMISSION

1800 ONE COMMERCE SQUARE  
2005 MARKET STREET  
PHILADELPHIA, PA 19103-7042  
215 851-6700  
FACSIMILE 215 851-6710

**DOCUMENTS FOR  
RECORDATION**

RECORDATION NO. \_\_\_\_\_ FILED 1425

AUG 3 1993 1:48 PM

August 3, 1993  
INTERSTATE COMMERCE COMMISSION

3-215A024  
\$ 32.00

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Secretary Strickland:

Enclosed for recordation with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the U.S. Code, and regulations and promulgated thereunder, are an original and two originally certified counterparts of one primary document and one secondary document described below. The primary document is a Lease Agreement, dated August 3, 1993, between First Security Bank of Utah, NA, as Owner Trustee ("Lessor") and Consolidated Rail Corporation ("Lessee"), (the "Lease"). The secondary document, relating to the Lease, is a Mortgage and Lease Assignment, dated August 3, 1993, among First Security Bank of Utah, NA, ("Borrower") and Concord Asset Management, Inc. ("Lender"), (the "Security Agreement").

The enclosed primary document is:

A Lease Agreement, dated as of August 3, 1993, between First Security Bank of Utah, NA, and Consolidated Rail Corporation.

The names and addresses of the parties to the Lease are as follows:

Lessor: First Security Bank of Utah, NA, as Owner  
Trustee  
Corporate Trust Department  
79 South Main Street  
P.O. Box 30007  
Salt Lake City, UT 84130-0007

AUG 3 1993 1:48 PM  
FBI PHILADELPHIA  
RECEIVED

*Concluded*

## HARKINS CUNNINGHAM

August 3, 1993  
Page 2

Lessee: Consolidated Rail Corporation  
Two Commerce Square  
2001 Market Street  
P.O. Box 41425  
Philadelphia, PA 19101-25

The equipment affected by the Lease consists of Ten (10) General Motors EMD SD40-2 diesel electric locomotives bearing road numbers 6961 through 6970, both inclusive.

The enclosed secondary document is:

A Mortgage and Lease Assignment, dated as of August 3, 1993, between First Security Bank of Utah, NA, and Concord Asset Management, Inc.

The names and addresses of the parties to the Mortgage and Lease Assignment are as follows:

Borrower: First Security Bank of Utah, NA, as Owner  
Trustee  
Corporate Trust Department  
79 South Main Street  
P.O. Box 30007  
Salt Lake City, UT 84130-0007

Secured Party: Concord Asset Management, Inc.  
One Norwalk West  
40 Richards Avenue  
Norwalk, CT 06858

The equipment affected by the Mortgage and Lease Assignment consists of Ten (10) General Motors EMD SD40-2 diesel electric locomotives bearing road numbers 6961 through 6970, both inclusive.

## HARKINS CUNNINGHAM

August 3, 1993  
Page 3

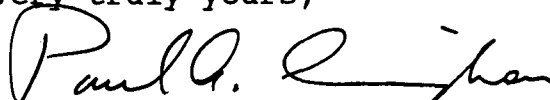
A short summary of the documents to appear in the index follows:

**Lease Agreement:** Lease Agreement, dated as of August 3, 1993, between First Security Bank of Utah, NA, as Owner Trustee, ("Lessor"), Corporate Trust Department, 79 South Main Street, P.O. Box 30007, Salt Lake City, UT 84130-0007 and Consolidated Rail Corporation ("Lessee"), Two Commerce Square, 2001 Market Street, P.O. Box 41425, Philadelphia, PA 19101-1425, covering ten (10) General Motors EMD SD40-2 diesel electric locomotives bearing road numbers 6961 through 6970, both inclusive.

**Mortgage and Lease Assignment:** Mortgage and Lease Assignment, dated August 3, 1993, among First Security Bank of Utah, NA, ("Borrower"), Corporate Trust Department, 79 South Main Street, P.O. Box 30007, Salt Lake City, UT 84130-0007 and Concord Asset Management, Inc., the secured party ("Lender"), One Norwalk West, 40 Richards Avenue, Norwalk, CT 06858, covering ten (10) General Motors EMD SD40-2 diesel electric locomotives bearing road numbers 6961 through 6970, both inclusive.

A fee of \$16.00 for each recordation is enclosed, totaling \$32.00. Please stamp and return any extra copies not needed by the Commission for recordation to the undersigned.

Very truly yours,



Paul A. Cunningham  
Counsel for Consolidated Rail  
Corporation

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/3/93

OFFICE OF THE SECRETARY

**Paul A. Cunningham**

**Counsel**

**Harkins Cunningham**

**1300 19th St N.W.**

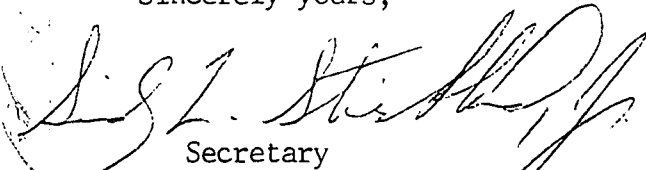
**Washington, D.C. 20036-1609**

Dear **Sir:**


The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on **8/3/93** at **1:45pm**, and assigned  
recordation number(s).

**18357 & 18357-A**

Sincerely yours,

  
Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)



214.4

116 3 1993 10 4 5 PM

INTERSTATE COMMERCE COMMISSION

Counterpart No. \_\_\_\_

THIS RAILROAD EQUIPMENT LEASE (the "Lease") is entered into as of the 3rd day of August 1993 between First Security Bank of Utah, National Association, not in its individual capacity but solely as Owner Trustee (hereinafter referred to as the "Lessor") and Consolidated Rail Corporation, a Pennsylvania corporation (hereinafter referred to as the "Lessee"), amending and restating in its entirety the Railroad Equipment Lease (the "Original Lease") entered into as of the 13th day of November 1992 by and between PAC RAIL, a California corporation (hereinafter referred to as "Pac Rail") and Lessee.

WHEREAS, pursuant to the Participation Agreement (the "Participation Agreement") dated as of August 3, 1993 between the Lessee; Pac Rail III, as Beneficiary; First Security Bank of Utah, National Association, as Owner Trustee; Concord Asset Management, Inc., as Lender (the "Lender"); and Pac Rail, as Original Lessor, the parties agreed to restructure the transactions evidenced by the Original Lease, as more particularly described therein;

WHEREAS, Lessee desires to lease from Lessor and Lessor desires to lease to Lessee all of the items of equipment specified in Exhibit A attached hereto or in any supplement to this Lease (hereinafter collectively referred to as the "Units" and singularly referred to as a "Unit") on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements set forth herein, the parties hereby agree as follows:

1. Lease of Units. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Units, to have and to hold the same unto Lessee for the period (a) as to each Unit, commencing on the date that such Unit is delivered to and accepted by Lessee, except in respect of the Ten Units (as defined in the Participation Agreement), in which case on the date of the execution and delivery of this Lease (in either case, the "Delivery Date") up to but not including the first day of the month following the Delivery Date for the last Unit hereunder, which Delivery Date shall in no event be later than December 15, 1993 (the "Commencement Date") (such period from the Delivery Date of a Unit up to but not including the Commencement Date hereinafter referred to as the "Interim Term" for such Unit) and (b) as to all Units, commencing on the Commencement Date and ending on the date seventy-two (72) months after the

Commencement Date (the "Basic Term Expiration Date"), or such earlier date as this Lease may be terminated with respect to the Units, or any of them, in accordance with the provisions hereof. The period of time commencing on the Commencement Date and ending on the Basic Term Expiration Date shall sometimes hereinafter be referred to as the "Basic Term." The Interim Term and the Basic Term shall sometimes hereinafter be referred to as the "Term."

2. Rent. Lessee agrees to pay to Lessor, at Lessor's offices located at Two Embarcadero Center, San Francisco, CA 94111, or to such other persons or at such other places as the Lessor may direct from time to time by written notice to Lessee, in coin or currency which at the time of payment is legal tender for payment of public and private debts in the United States of America, the amount of Rent specified in Exhibit B attached hereto (the "Rent") during the Term of this Lease. The Rent provided for herein and then in effect shall be due and payable (a) as to Interim Rent in advance on the first day of each month, with respect to the Units which have been delivered to the Lessee as of such date and (b) as to Basic Rent in advance on the Commencement Date and thereafter on the first day of each month during the Term. In addition, Lessee shall pay Interim Rent to Lessor on (i) on the first rent payment date to occur during the Interim Term, in arrears for the period from the Delivery Date with respect to the Units to such rent payment date and (ii) each rent payment date during the Interim Term and on the Commencement Date, in arrears for any Units delivered during the prior month. The Lessee shall also pay, as additional rent, all such other sums of money as shall become due and payable by Lessee to Lessor under this Lease (the Interim Rent and any additional rent due hereunder are sometimes hereinafter referred to as "Gross Rent"). All past due installments of Gross Rent shall bear interest from date due until paid at the greater of (a) fourteen percent (14%) per annum or (b) the annual rate of five percent (5%) plus the prime rate announced from time to time by the Chemical Bank of New York during the period of delinquency, but in no event greater than the maximum rate permitted by applicable law.

This Lease is a net lease and except as expressly provided herein the Lessee shall not be entitled to an abatement of rent or additional rent, or setoff against or recoupment or reduction of Rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counter-claims of the Lessee against the Lessor under this Lease. Except as

expressly provided herein the Lessee's obligations hereunder, including its obligations to pay all Rent, additional rent and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. So long as no Event of Default exists hereunder, if Lessor or anyone lawfully claiming under or through Lessor shall interfere with Lessee's possession and use of any Unit, Lessee's obligation to pay Rent with respect to such Unit hereunder shall abate for so long as such interference continues and nothing in this Section 2 shall be deemed to constitute a waiver of any claim or right of action that Lessee may have against Lessor as a result of this Lease or otherwise.

3. Delivery and Acceptance of Units. Lessor at its expense, will cause each Unit to be tendered to the Lessee at such point or points as are set forth on Exhibit B attached hereto. Prior to such tender Lessee will cause its authorized inspectors or representatives to conduct a joint inspection of the Units with representative of Lessor, and if such Units are found to be satisfactory to Lessee and in good operating order and repair, to accept delivery of such Units (or so many of such Units as are acceptable to Lessee) and to execute and deliver to the Lessor a certificate in the form of Exhibit C hereto signed by a responsible officer of the Lessee acknowledging the delivery of the Units by Lessor, the conformance of such Units to the requirements of the Interchange Rules of the Association of American Railroads and the acceptance of the Units by Lessee, whereupon such Units shall be deemed to have been delivered to and accepted by the Lessee under this Lease and shall be subject thereafter to all of the terms and conditions of this Lease and such Lessee's certificate shall be absolutely binding

upon Lessee. On the first day of the month following the delivery to and acceptance by Lessee of all Units shown on Exhibit A (which delivery and acceptance with respect to the final Unit shall occur no later than December 15, 1993), unless otherwise agreed between Lessor and Lessee (the "Commencement Date"), the Interim Term as to all Units shall end and the Basic Term commence.

4. Maintenance and Repairs. Lessee, at its sole expense, shall (i) keep and maintain the Units leased hereunder in good repair and operating condition in conformance with the manufacturer's recommended normal maintenance practices; Interchange Rules of the Association of American Railroads (AAR); and Federal Railroad Administration (FRA) Locomotive Safety requirements, as the same may be amended from time to time, and (ii) free from any and all liens and claims other than liens imposed upon the Lessor, which liens shall be the responsibility of Lessor.

Any and all additions to any Unit (other than those that are readily removable without damage to the Unit), and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, without cost or expense to the Lessor, there shall immediately be vested in the Lessor the same interest in such accessions as the interest of the Lessor in such Unit. The Lessee may make alterations or modifications in any Unit so long as the value of such Unit is not adversely affected.

5. Disclaimer of Warranties. LESSOR, BEING NEITHER THE MANUFACTURER OF THE UNITS NOR THE MANUFACTURER'S AGENT, HEREBY EXPRESSLY DISCLAIMS AND MAKES TO LESSEE NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO: THE FITNESS FOR USE, THE DESIGN OR THE CONDITION OF THE UNITS; THE QUALITY OR CAPACITY OF THE UNITS; THE WORKMANSHIP IN THE UNITS; OR THAT THE UNITS WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE. LESSOR IS NOT RESPONSIBLE OR LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGE TO OR LOSSES RESULTING FROM THE INSTALLATION, OPERATION OR USE OF THE UNITS OR ANY UNIT. Lessor hereby acknowledges that any manufacturer's and/or seller's warranties are for the benefit of both Lessor and Lessee. Lessee's acceptance of delivery of the Units shall be conclusive evidence, as between Lessor and Lessee, that each Unit described in any Lessee's certificate executed pursuant to Section 3 above, is in all of the foregoing respects satisfactory to the Lessee, and the



Lessee will not assert any claim of any nature whatsoever against Lessor based on all or any one of the foregoing matters.

6. Use of the Units. Lessee agrees, for the benefit of Lessor, Beneficiary and the Lender, to use the Units predominately in the United States and to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all rules and regulations of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative, judicial or governmental body exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the ownership, possession, operations or use of such Unit; and Lessee shall and does hereby indemnify and hold harmless Lessor, the Beneficiary and the Lender from and against any and all liability and damages that may arise from any violation of this Section 6, or of any such laws, rules or regulations by Lessee, its agents, employees, or any other person. In the event that such laws, rules or regulations require any alteration, change, modification or enhancement of any nature whatsoever to the Units or any Unit, Lessee shall make such alterations, changes, modifications and enhancements at its own expense and to use, maintain and operate such Units in full compliance with such laws, rules and regulations so long as such Units are subject to this Lease; provided, however, that Lessee may, in good faith, contest the validity or application of any such law, rule or regulation in any reasonable manner that does not, in the sole opinion of Lessor, adversely affect the rights of Lessor in the Units or hereunder; and provided further, to the extent the cost of any such alteration, change, modification or enhancement in the aggregate exceeds \$75,000 for any Unit, Lessee may elect with respect to any such Unit or Units (1) to make such alteration, change, modification or enhancement and request Lessor, at Lessor's option, to finance the amount of such excess, in which event Lessee will repay such amount over the remaining Rent payments dates during the Term, amortized over such period at an interest rate of 7.5%; (2) elect to otherwise finance the excess cost of the alteration, change, modification or enhancement; or (3) purchase the affected Unit or Units at the Casualty Value as set forth in Exhibit A-1.

7. Filings. Lessee agrees to prepare and deliver to Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of,

and furnish a copy to, Lessor) any and all reports required to be filed by Lessor which Lessor has advised Lessee, in writing, are required to be filed by Lessor or requested by Lessor to be filed, with any federal, state or other regulatory authority by reason of the ownership by Lessor of the Units, the security title of Lessor to the units or the leasing of the Units to Lessee; provided, however, that Lessor shall be responsible for filing this Lease with the Interstate Commerce Commission pursuant to 49 U.S.C. 11303.

Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Exhibit A hereto and all other markings and stenciling required by the Interchange Rules of the Association of American Railroads, as the same may be amended from time to time, and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following words: "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission," or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the title of Lessor to Units and the rights of Lessor under this Lease. Lessee will not place any of the Units in operation or exercise any control or dominion over the same until such words have been so marked on both sides thereof and will replace promptly and such words which may be removed, defaced or destroyed. Lessee will not change, or permit to be changed, the number of any Unit, except in accordance with a statement of new numbers to be submitted therefor which previously shall have been filed with Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Each Unit may be lettered in an appropriate manner for convenience of identification of the interests of Lessee therein. Except as above provided, Lessee will not allow the name of any person, association or corporation to be placed on any of the Units as a designation which might be interpreted as a claim or ownership thereof.

8. Taxes and Other Assessments. Lessee shall be responsible for, and shall indemnify and hold Lessor, the Beneficiary and the Lender harmless from all taxes (including, without limitation, sales, use, excise, import, domestication, personal property, ad valorem, withholding, stamp, documentary and other taxes imposed in lieu of such taxes, and excluding only any federal income taxes of Lessor, the Beneficiary or the Lender or any state, local or foreign

taxes imposed upon or measured by net income of Lessor or the Lender, or imposed in lieu of such taxes, but in the case of Lender, not excluding such foreign, state or local taxes to the extent that such taxes are or would have been imposed solely as a result of the operation or location of any Unit in such jurisdiction), license fees, assessments, charges, duties, fines and penalties, currently or hereafter levied or imposed by any state, local, federal or foreign authority (all such expenses, taxes, license fees, assessments, charges, fines or penalties being hereinafter called "Assessments") upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, financing, mortgaging or delivery made pursuant to this Lease or the Operative Documents that are in addition to any taxes already imposed upon Lessor solely as a result of its ownership of the Units or that are imposed upon or with respect to the Lender solely as a result of its financing of the Units or on or with respect to any Unit and will keep at all times all and every part of the Units free and clear of all Assessments (other than assessments that are not the responsibility of Lessee pursuant to this Section 8) that might in any way affect the title of Lessor to any Unit or the security interest of Lender in any Unit or result in a lien upon any Unit. In the event that during the continuance of this Lease any reports or information with respect to Assessments involving the Units are required to be made or provided, Lessee will make or provide such information or reports in such manner as shall be satisfactory to Lessor, the Beneficiary or Lender, as appropriate. Lessee shall, whenever requested by Lessor, the Beneficiary or the Lender, submit to Lessor, the Beneficiary or Lender, as appropriate, copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to Lessor, the Beneficiary and the Lender of Lessee's performance of its duties under this Section 8. Lessee shall also furnish promptly on request all data as Lessor or Lender shall reasonably require to permit Lessor's or the Lender's compliance with the requirements of taxing jurisdictions.

To the extent that Lessee is prohibited by law from performing in its own name the duties required by this Section 8, and only to such extent, Lessor, the Beneficiary and Lender hereby authorize Lessee to act in Lessor's name and on its behalf (except in the case of Lender, such authorization shall not extend to matters relating to any tax on or measured by net income or any tax in lieu of such taxes); provided, however, that Lessee shall indemnify and hold Lessor and the Lender harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of or incident

to, any action by Lessee pursuant to this authorization, other than those resulting from the gross negligence or willful misconduct of Lessor, the Beneficiary or Lender.

In the event that, during the continuance of this Lease, the Lessee shall become liable for the payment or reimbursement of any Assessments pursuant to this Section 8, such liability shall continue, notwithstanding the termination of this Lease, until such Assessments are paid or reimbursed by Lessee.

9. Indemnification. Except as otherwise provided in this Lease, Lessee assumes liability for, and hereby agrees to indemnify, protect and keep harmless Lessor, the Beneficiary and the Lender, its employees, agents, successors and assigns from and against any and all liabilities, obligations, leases, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorneys fees of whatsoever kind and nature, arising out of any breach of this Lease by Lessee, or arising out of the possession, use, condition, remanufacturing the Units as contemplated by the Participation Agreement, operation, ownership, selection, delivery, leasing or return of the Units or any Unit, regardless of where, how and by whom operated other than those arising from the gross negligence or willful misconduct of Lessor. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the expiration or other termination of this Lease. Lessee is an independent contractor and nothing contained in this Lease shall authorize Lessee or any other person to operate any of the Units so as to incur or impose any liability or obligation for or on behalf of Lessor, the Beneficiary or the Lender.

10. Lessor's Performance of Lessee's Obligations. If Lessee shall fail to duly and promptly perform any of its obligations under this Lease with respect to the Units, Lessor shall have the option, but not the obligation, to perform any act or make any payment that Lessor deems necessary for the maintenance and preservation of the Units and Lessor's title thereto, including payments for satisfaction of liens, repairs, Assessments, levies and insurance, and all sums so paid or incurred by Lessor, and any reasonable legal and accounting fees incurred by Lessor in connection therewith shall be additional rent under this Lease payable by Lessee to Lessor on demand. The performance of any act or payment by lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of the Lessee, and Lessee shall continue to be

liable for any such performance or payment by Lessor notwithstanding the expiration or earlier termination of this Lease.

11. Insurance. Lessee agrees to include the Units in its regular program of insurance but nothing in this Lease shall be deemed to require Lessee to change its insurance program or to take out separate insurance on the Units. Lessee will promptly notify Lessor of any material change in its insurance program. Lessee shall cause all policies of insurance carried in accordance with this Section 11 to name the Lessor and the Lender as additional insured as their respective interests may appear.

12. Risk of Loss. Except for a (i) Casualty Occurrence (as defined below) occurring prior to delivery, or (ii) damage or injury occurring as a result of Lessor's actions during an inspection conducted pursuant to Sections 13 or 17 of this Lease, Lessee assumes all risk of loss, damage, theft, condemnation or destruction of the Units. Except as provided in this Section 12, no such loss, damage, theft, condemnation or destruction of the Units, or any Unit, in whole or in part, shall impair the obligations of Lessee under this Lease, all of which shall continue in full force and effect. Whenever any Unit shall be or becomes worn out, lost, stolen, destroyed or damaged, from ordinary use, neglect, abuse, fire, the elements or any other cause whatsoever, or taken or requested by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the Term of this Lease, Lessee shall, promptly after it shall have been determined that such Unit has suffered a Casualty Occurrence, but in any event within thirty (30) days after such Casualty Occurrence or within such shorter times as may be required by any applicable rules or regulations of the Association of American Railroads, notify Lessor in writing of such Casualty Occurrence. In the event any of the Units suffers a Casualty Occurrence, Lessee shall pay to Lessor an amount equal to the accrued Rent for such Unit(s) to the date of payment plus an amount equal to any accrued but unpaid Assessments plus a sum equal to the amount shown in the Casualty Value Schedule specified in Exhibit A-1 less the amount of the recovery, if any, from or through Lessee actually received by Lessor from Lessee's insurance or otherwise for such Casualty Occurrence, in which case such Units shall thereafter be deleted from this Lease. The balance of any recovery received by Lessor from insurance or otherwise for such Casualty Occurrence shall belong solely to Lessor.

13. Annual Report. On or before March 1 of each year during the Term of this Lease, Lessee will furnish to Lessor, the Beneficiary and Lender, upon the request of Lessor, the Beneficiary or Lender, Lessee's certificate, as of the preceding December 31, (i) showing the amount, description and numbers of Units then leased hereunder and the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve (12) months (or since the Commencement Date in the case of the first such Lessee's certificate), and such other information regarding the condition and state of repair of the Units as Lessor, the Beneficiary or Lender may reasonably request, (ii) stating that, in the case of all Units repaired or repainted during the period covered thereby, the markings required by Section 7 hereof have been preserved or replaced, and (iii) containing all other information in the possession of Lessee that is required by be filed by Lessor with any division of the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation, or, any other federal, state, administrative, legislative, judicial or governmental body having jurisdiction in the matter. Lessor, the Beneficiary and the Lender shall have the right, but not the obligation, by its authorized representative upon proper notice to Lessee, and in such a manner as not to disrupt or interfere with the safe operation of Lessee's business, to inspect the units and the records of Lessee with respect thereto.

14. Lessee Default. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions (hereinafter referred to as "Events of Default") during the Term of this Lease:

(a) If Lessee fails to pay any sum required to be paid hereunder on or before the due date and such failure continues for a period of ten (10) consecutive days;

(b) If Lessee fails at any time to procure or maintain any insurance coverage required by this Lease;

(c) If Lessee fails to observe or perform any of the covenants, conditions and agreements on the part of Lessee to be observed or performed and contained herein (other than the payment of any sums required to be paid hereunder and other than the obligation to procure and maintain any insurance coverage required by this Lease) or any schedule or any supplement or rider hereto, and such default shall continue for thirty (30) days after receipt by Lessee or written notice of such default;

(d) If Lessee consents to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy law (now or hereafter in effect) or any answer admitting the material allegations of a petition filed against Lessee in any such proceedings, or Lessee shall by voluntary petition, answer or consent seek relief under the provisions of any now existing or future bankruptcy or other similar law providing for the reorganization or winding up of a business, or providing for an agreement, composition, extension or adjustment with its creditors;

(e) If an order, judgement or decree shall be entered by any court of competent jurisdiction appointing, without the consent of Lessee, a receiver, trustee or liquidator of Lessee or any substantial part of its property, or sequestering any substantial part of the property of Lessee, or granting any other relief in respect of Lessee under the federal bankruptcy laws, and any such order, judgement or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of sixty (60) days after the date of entry thereof;

(f) If a petition against Lessee in a proceeding under the federal bankruptcy laws or other similar insolvency laws (as now or hereafter in effect) shall be filed and shall not be withdrawn or dismissed within sixty (60) days thereafter, or if, under the provisions of any law providing for reorganization or winding up of corporations that may apply to Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of sixty (60) days;

(g) If Lessee shall make or permit any unauthorized assignment or transfer of this Lease, the Units or any interest therein; or

(h) If any material representation or warranty of Lessee contained in this Lease or in the Participation Agreement shall prove to be materially untrue or incorrect and the interests of Lessor or Lender are adversely affected thereby.

15. Lessor's Remedies. (a) Upon the occurrence of any one or more of the Events of Default specified in Section 14 above, and at any time thereafter (unless such Event of Default shall have been waived in writing by Lessor), Lessor or the Lender may without any further notice exercise any one or more of the following remedies:

(i) Declare all unpaid Gross Rent under this Lease to be immediately due and payable;

(ii) Terminate this Lease as to any or all Units without relieving Lessee of any of its obligations hereunder;

(iii) Cause Lessee, at its sole expense, to promptly return the Units to Lessor in accordance with the terms and provisions of Section 17 hereof;

(iv) Use, hold, sell, lease or otherwise dispose of the Units or any Unit on the premises of Lessee or any other location without affecting the obligations of Lessee as provided in this Lease; provided, however, that Lessor shall not store any Units on Lessee's premises beyond the Basic Term Expiration Date plus the additional time specified in Section 17(c).

(v) Sell or lease the Units or any Unit at public auction or by private sale or lease at such time or times and upon such terms as Lessor may determine, free and clear of any rights of Lessee and, if notice thereof is required by law, any notice in writing of any such sale or lease by Lessor to Lessee not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Lessee;

(vi) Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(vii) Exercise any other right accruing to Lessor under any applicable law or in equity.

(b) If any Unit is sold, leased or otherwise disposed of pursuant to this Section 15, Lessee shall be liable to Lessor for and Lessor may recover from Lessee, as damages for the breach of this Lease, and not as a penalty, the amount by which the proceeds of such lease, sale, or other disposition is less than the sum of: (i) all due, unpaid and accrued Gross Rent for such Unit as of the date of



the Event of Default; (ii) the Casualty Value of such Unit as of the date of default by Lessee; (iii) an amount equal to accrued Assessments and other amounts payable hereunder by Lessee with respect to such Unit; and (iv) all costs, expenses, losses and damages incurred or sustained by lessor by reason of such default including, without limitation, attorneys' fees and appraisal fees. If on the date of termination or repossession pursuant to this Section 15, any Unit is damaged, lost, stolen or destroyed, or subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, Lessee shall remain liable for the damages set forth in this Section 15(b), less the amount of the recovery, if any, actually received by Lessor from Lessee's insurance or otherwise from or through Lessee in connection therewith.

(c) No right or remedy conferred on or reserved to Lessor by this Lease shall be exclusive of any other right or remedy herein or by law provided. All rights and remedies of Lessor conferred on Lessor by this Lease or by law shall be cumulative and in addition to every right and remedy available to Lessor. No failure on the part of Lessor to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof unless specifically waived by Lessor in writing; nor shall any single or partial exercise by the Lessor of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

(d) In the event that Lessor shall bring any action, proceeding, or suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such action, proceeding or suit Lessor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgement. In the event that Lessor has incurred any expenses and attorney's fees in the enforcement of any of its rights hereunder without having brought any of its rights hereunder without having brought any auction, proceeding or suit to so enforce any such right, then Lessor may recover from Lessee any reasonable expenses and attorney's fees so incurred.

(e) Promptly after Lessee has notice of any event that has occurred and is continuing that would constitute an Event of Default but for the requirement that notice be given or time of Default but for the requirement that notice be given or time elapse or both, Lessee shall give written notice thereof to Lessor.

16. Lease Renewal Option. Provided that this Lease has not been earlier terminated and no Event of Default has occurred and is continuing, the Lessee may, upon notice given to Lessor 120 days prior to the Basic Term Expiration Date, (i) extend the Lease under the same terms and conditions with respect to all of the Units for three (3) years commencing on the day following the Basic Term Expiration date, (ii) return any or all Units in groups not less than five (5) or (iii) purchase in groups of five (5) Units or more for \$300,000.00 each.

17. Return of Units. At the expiration of this Lease, or at the direction of Lessor pursuant to section 15 of this Lease, Lessee shall forthwith deliver possession of the units to the Lessor. It is agreed that Lessee's return obligation shall be to return the Units: (i) in similar condition as received except for ordinary wear and tear, (ii) free of AAR & FRA defects, and (iii) with each Unit able to attain design horsepower as determined by load test. For the purpose of delivering possession of the Units to the Lessor as above required, Lessee shall at its own cost, expense and risk.

(a) Place the Units upon such storage tracks of Lessee as Lessor may reasonably designate;

(b) Promptly upon request by Lessor, remove any markings on the Units which indicate lessee has any interest in the Units and if requested by Lessor, at Lessee's cost, remark the Units in accordance with lessor's instructions;

(c) Permit Lessor to store such Units on such tracks at the risk of Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, provided, however, that Lessor shall not be entitled to store such Units on such tracks for more than one hundred eighty (180) days after the termination of this Lease; and

(d) Transport the Units to any place on the lines of any railroad operated by Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor; provided, however, that Lessee shall not be required to transport any Unit more than once pursuant to this Paragraph (d).

The assembling, delivery, storage and transporting of the Units as herein before provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having

jurisdiction in the matter, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. During any storage period, Lessee will, upon proper notice, permit, at Lessor's cost and expense, Lessor or the Lender or any person designated by either such person, including the authorized representative or representatives of any prospective purchaser of the Units or any Unit, to inspect the same, provided that such inspection is conducted in accordance with normal industry practice and at such times, and in such a manner that it does not interfere with the safe operation of Lessee's business. Lessee shall indemnify, protect and keep harmless Lessor and the Lender, its employees, agents, successors and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, actions, costs and expenses (including reasonable attorney fees) for personal injuries or property damage arising out of Lessor's inspection of the Units pursuant to Section 13 or this Section 17, other than those resulting from the gross negligence of the Lessor, the Lender or other party seeking indemnity hereunder.

18. Lessee's Representations and Warranties.

Lessee represents and warrants as follows:

(a) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Pennsylvania. Lessee has the corporate power to engage in the transactions contemplated by the Lease, and Lessee's execution, delivery and performance of the lease have been duly authorized by all necessary corporate action on the part of Lessee;

(b) There is no action, suit or proceeding pending or threatened or affecting Lessee before or by any court, administrative agency or other governmental authority which brings into question the validity of the transactions contemplated by the Lease;

(c) Neither the execution and delivery by Lessee of the Lease nor the consummation by Lessee of the transaction contemplated thereby, conflicts with or results in a breach of any of the provisions of the certificate of incorporation or by-laws of Lessee, or of any applicable law, judgement, order, writ, injunction, decree, rule or regulation of a court, administrative agency or other governmental authority, or of any indenture, agreement or other instrument to which Lessee is a party or by which it is bound or constitutes a default under any thereof;

(d) No consent, approval or other authorization of or by any court, administrative agency, other governmental authority or by any other person is required, except such consents, approvals or other authorizations which have been obtained, in connection with the execution, delivery or performance by Lessee of, or the consummation by Lessee of the transactions contemplated by, the Lease; and

(e) The Lease constitutes a legal, valid and binding instrument enforceable in accordance with its terms against Lessee.

19. Notices. Unless otherwise agreed to in writing by the parties, any notice required or permitted to be given by either party hereto to the other shall be in writing and shall be deemed given when sent by United States Certified or Registered Mail Return Receipt Requested, postage prepaid, addressed as follows:

TO LESSOR:                      FIRST SECURITY BANK OF UTAH,  
                                 NATIONAL ASSOCIATION, as Owner  
                                 Trustee  
  
                                 79 South Main Street  
                                 P.O. Box 30007  
                                 Salt Lake City, UT 84130-0007  
  
                                 Attention: Corporate Trust  
                                 Department

with copies to:

                                 CONCORD ASSET MANAGEMENT, INC.  
                                 One Norwalk West  
                                 40 Richards Avenue  
                                 Norwalk, CT 06858  
  
                                 Attention: Vice President-  
                                 Operations

and

                                 PAC RAIL III  
                                 Two Embarcadero Center, Suite 1655  
                                 San Francisco, CA 94111  
  
                                 Attention: President

TO LESSEE:

CONSOLIDATED RAIL CORPORATION  
2001 Market Street P.O. Box 41425  
Philadelphia, PA 19101-1425

Attention: Thomas J. McFadden  
Director - Project  
Finance

or at such other place as such parties may from time to time designate by notice, each to the other. If the term "Lessee" as used in this Lease refers to more than one person or entity, any notice, consent, approval, request, bill, demand or statement given as aforesaid to any one of such persons or entities shall be deemed to have been duly given to Lessee.

20. Invalid Provisions. Any provision of this Lease that is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

21. Miscellaneous Provisions. (a) This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and (except as provided in Section 2(g) and in the Participation Agreement) supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Lessor and Lessee.

(b) This Lease shall be executed in four counterparts. The single executed counterpart of this Lease marked "Counterpart No. 1" shall be the original and all other counterparts hereof shall be duplicates. To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than that marked "Counterpart No. 1."

(c) The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303 and such additional rights arising out of the filing,

recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

(d) Lessee may not, by operation of law or otherwise, assign, transfer, pledge, hypothecate or otherwise dispose of this Lease or any interest herein, or sublet any of the Units for more than six (6) months, or enter into consecutive subleases to the same sublessee for more than six months, without Lessor's prior written consent; provided, however, that no consent shall be required for an assignment or sublease to an affiliate of Lessee but further provided that no such assignment or sublease shall relieve Lessee of its obligations under this Lease. This Lease may be assigned by Lessor only upon the prior written consent of Lessee; provided, however, that Lessee shall withhold its consent only in the event that the proposed assignment will cause Lessee or the assignee to be in violation of any federal, state or local law or regulation. Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of the Lessor. In conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to provide any reasonable documentation requested by Lessor.

(e) Nothing contained herein shall give or convey to Lessee any right, title or interest in and to the Units leased hereunder except as a Lessee thereof, and the Units are and shall at all times be and remain the sole and exclusive property of Lessor.

(f) Any cancellation, termination or assignment of this Lease by Lessor or Lessee pursuant to the terms and provisions hereof, or any schedule, supplement, rider or amendment hereto, or any termination of the Term by lapse of time, shall not release Lessor or Lessee from any then outstanding obligations and/or duties to Lessor or Lessee hereunder.

(g) Time is of the essence of this Lease.

(h) It is expressly understood and agreed by the parties hereto that this instrument constitutes a lease of the Units only, and that no joint venture or partnership is being created.

(i) To the extent there exists any conflict between the terms and provisions of this Lease and the terms

and provisions of the Interchange Rules of the Association of American Railroads, this Lease shall control.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the day and year first above written.

LESSOR:

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION, not in  
its individual capacity but  
solely as Owner Trustee under  
the Trust Agreement

By: 

Name: Greg A. Hawley  
Assistant Vice President

Title: \_\_\_\_\_

Date: July 29, 1993

LESSEE:

CONSOLIDATED RAIL CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This is Counterpart No. \_\_\_\_\_



IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the day and year first above written.

LESSOR:

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION, not in  
its individual capacity but  
solely as Owner Trustee under  
the Trust Agreement

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LESSEE:

CONSOLIDATED RAIL CORPORATION

By: Thomas J. McFadden

Name: THOMAS J MCFADDEN

Title: DIRECTOR - PROJECT FINANCE

This is Counterpart No. \_\_\_\_\_

DATE: July 28, 1993



COMMONWEALTH OF PENNSYLVANIA)

) ss:

COUNTY OF PHILADELPHIA )

On the 27 day of July, 1993 before me personally came Thomas J. McFadden to me know and being duly sworn did depose and say that he is the Director - Project Finance of Consolidated Rail Corporation, the corporation described in and which executed the above instrument and that he signed his name thereto on the date noted thereon by order of the Board of Directors of such corporation.

  
Notary Public

NOTARIAL SEAL  
LORETTA DANDRIDGE, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires Aug. 27, 1994

**EXHIBIT A**

**DESCRIPTION OF THE UNITS**

Ten SD 40-2 locomotives as follows:

CR 6961 through 6970 - Inclusive

**EXHIBIT A-1**

**CASUALTY VALUE SCHEDULE**

[Intentionally Omitted]

**EXHIBIT B**

**RENT AND OTHER TERMS OF THE LEASE**

**RENT:**

Basic Rent, as to each Unit, shall equal  
\$[Intentionally Omitted] per month during the Basic Term.

Interim Rent, as to each Unit, shall be computed by multiplying the Basic Rent by twelve (12), dividing that product by three hundred sixty-five and multiplying by the number of days from and including the Delivery Date to but not including the Commencement Date.

Basic Term, shall commence on the first day of the month following the delivery date of the fortieth Unit (which delivery Date shall not be later than December 15, 1993).

**BASIC TERM EXPIRATION DATE:**     Seventy-two (72) months  
   following the Commencement Date

**POINT OF TENDER:**                     CONRAIL Altoona, PA

## EXHIBIT C

### ACCEPTANCE CERTIFICATE

CONSOLIDATED RAIL CORPORATION ("Lessee"), a Pennsylvania corporation, does hereby represent, acknowledge, warrant and agree as follows:

1. Lessee has received this \_\_\_\_ day of \_\_\_\_ 19\_\_, at \_\_\_\_\_, from First Security Bank of Utah, National Association, as Owner Trustee ("Lessor"), possession of the Units described on Exhibit A hereto.

2. All of the foregoing have been delivered and accepted on the date above mentioned to Lessee's full satisfaction and pursuant to the terms and provisions of the Railroad Equipment Lease between Lessee and Lessor, dated as of August 3, 1993 (hereinafter referred to as the "Lease"). Capitalized terms used in this Certificate and not defined herein shall have the meanings given them in the Lease.

3. The Units as described on Exhibit A hereto have been fully examined by Lessee and have been received in a condition fully satisfactory to Lessee and in full conformance with the requirements of the Interchange Rules of the Association of American Railroads and the Lease in every respect.

4. The date set forth in paragraph 1. above is the Delivery Date for the Units listed on Exhibit A hereto, and Interim Rent accrues for such Units beginning on the Delivery Date and continuing through the Interim Term at the rate set forth in Exhibit B to the Lease.

5. The Lease is in full force and effect, and Lessee has no claims, offsets, deductions, set-offs or defenses of any kind or nature in connection with said Lease.

CONSOLIDATED RAIL CORPORATION

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_